

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>INNOPHOS HOLDINGS INC.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>Case No. 14-TT-214</b>
<b>v.</b>	)	
	)	<b>James M. Conway</b>
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	<b>Chief Administrative Law Judge</b>
	)	
<b>Respondent.</b>	)	

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**DEPARTMENT’S ANSWER TO PETITIONER’S FIRST AMENDED PETITION**

NOW COMES the Illinois Department of Revenue (the “Department”), through its attorney, Lisa Madigan, Illinois Attorney General, and for its First Amended Answer to the Innophos Holdings, Inc. (“Petitioner” of “Taxpayer”) First Amended Petition, respectfully pleads as follows:

**Jurisdiction and Venue**

1. This timely petition involves two Notices of Deficiency (“NOD”) that each assesses an amount in excess of \$15,000.00 in tax, penalty and interest under a tax law identified in Section 1-45 of the Tax Tribunal Act; therefore, the Tax Tribunal has jurisdiction over this petition.

**ANSWER:** The Department admits that it issued two Notices of Deficiency to Petitioner on or about September 11, 2014 for the tax years ending December 2009 and 2010 in the amounts of \$1,406,079.49 and \$1,126,050.59, respectively. Petitioner’s assertions that the Petition was timely filed and that the Tax Tribunal has jurisdiction over this matter are legal conclusions, not material allegations of fact, and therefore do not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Adm. Code §5000.310).

The Department admits the existence, force, and effect at all relevant times of the statutes set forth or referred to in Paragraph 1.

2. Innophos accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

**ANSWER:** Paragraph 2 does not contain a material allegation of fact, and therefore does not require an answer pursuant to 86 Ill. Admin. Code 5000.310(b)(2) (hereinafter "Rule 310(b)(2)").

#### **Alleged Facts Common to all Counts**

3. Innophos is a corporation maintaining its principal office at 259 Prospect Plains Road, Cranbury, New Jersey 08512-8000.

**ANSWER:** The Department admits the allegations in Paragraph 3.

4. Innophos is a leading producer of specialty grade phosphate for the food, pharmaceutical and industrial market segments. Within these segments, Innophos' products cover a broad range of applications including water, paper and metal treatment, agriculture, electronics, textiles, tablets, meat preservation and detergents.

**ANSWER:** The Department admits that Innophos was a producer of specialty grade phosphate for the food, pharmaceutical and industrial market segments and that its products cover a broad range of applications including water, paper and metal treatment, agriculture, electronics, textiles, tablets, meat preservation and detergents. The Department denies all other allegations in Paragraph 4 and demands strict proof thereof.

5. The Illinois Department of Revenue is an executive agency authorized, among other functions, to administer and enforce the provisions of the Illinois Income Tax Act. 35 ILCS 5/101 *et seq.*

**ANSWER:** The Department admits that it is an agency of the Executive Branch of the Illinois State Government and is tasked with enforcing the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*), which is relevant to the legal claims raised in Taxpayer's petition. The term "among other functions" is ambiguous; the Department therefore denies all other allegations in Paragraph 5.

6. Innophos' corporate headquarters is located in New Jersey.

**ANSWER:** The Department admits the allegation in Paragraph 6.

7. Innophos has manufacturing facilities located in Illinois, Louisiana, New Jersey, Tennessee, and Utah.

**ANSWER:** The Department admits that Petitioner and its subsidiaries have fixed assets in Illinois. The Department lacks sufficient knowledge to either admit or deny all other allegations in paragraph 7 and demands strict proof thereof.

8. Innophos also has manufacturing sites in Canada and Mexico.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 8 and demands strict proof thereof.

9. Innophos has two manufacturing plants located in Illinois, one in Chicago Heights, Illinois and the other in Waterway, Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 9 and demands strict proof thereof.

10. Innophos owns a distribution center in Chicago Heights, Illinois (the “Jacobson Center”).

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegation in paragraph 10 and demands strict proof thereof.

11. While owned by Innophos, a third-party under contract to Innophos is responsible for the Jacobson Center operations and employs its own personnel.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 11 and demands strict proof thereof.

12. More than half of Innophos’ products are routed through the Jacobson Center.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 12 and demands strict proof thereof.

13. Products made in the United States, Mexico and Canada are routed through the Jacobson Center.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 13 and demands strict proof thereof.

14. Purchase orders for Innophos’ products are received and processed in New Jersey.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 14 and demands strict proof thereof.

15. Innophos produces inventory to fill expected customer demand, in anticipation of purchase orders.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 15 and demands strict proof thereof.

16. Innophos uses a business forecast model to predict its customers' order volume in the near future, usually 3 months to a year out.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 16 and demands strict proof thereof.

17. The business forecast relies on the order history of Innophos' customers and is based on the customers' quantity, product and grade order history.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 17 and demands strict proof thereof.

18. The business forecast model determines the amount of inventory that is stocked at any given time at the Jacobson Center, so that product is already on-site and ready to be shipped to customers as purchaser orders are received and processed in New Jersey.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 18 and demands strict proof thereof.

19. Products are shipped and stored in the Jacobson Center even if ultimately they may not be sold or delivered to Illinois customers.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 19 and demands strict proof thereof.

20. Most of the products produced in Illinois and shipped to the Jacobson Center, along with the products produced elsewhere that are shipped to the Jacobson Center, are sold to customers outside of Illinois.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 20 and demands strict proof thereof.

21. The Jacobson Center uses a “pick ticket” authorization system to ship its inventory.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 21 and demands strict proof thereof.

22. When an order is received and processed in New Jersey, a ticket instruction is then sent to the third-party manager of the Jacobson Center to fulfill the ticket. The third-party has no decision making ability; it only picks and ships the products (on a pallet basis) that it is told to ship.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations in paragraph 22 and demands strict proof thereof.

23. The Illinois Income Tax Act (the "IITA") imposes a tax on the net income of every individual, corporation, trust and estate for the privilege of earning or receiving income in or as a resident of Illinois. 35 ILCS 5/101 *et seq.*

**ANSWER:** Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/101 *et seq.*, and states that such law speaks for itself.

24. For a taxpayer that makes sales of tangible personal property, like Innophos, the Illinois corporate income tax is imposed on the taxpayer's "base income," as defined in the IITA (federal taxable income after statutory addition and subtraction modifications) that is: (A) "non-business income" as defined in the IITA which is allocable to Illinois; and (B) "business income" as defined in the IITA (all income other than nonbusiness income) which is "apportionable" to Illinois according to the ratio of Illinois sales to total sales everywhere. That ratio is commonly referred to as the "sales factor" or the "apportionment formula."

**ANSWER:** Paragraph 24 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/101 *et seq.*, and states that such law speaks for itself.

25. The Department's audit staff and management requested and received access to Innophos' books and records supporting its Illinois state tax returns.

**ANSWER:** The Department admits that personnel from the Department's Audit Division requested access to Petitioner's books and records supporting its Illinois State tax returns. The Department lacks sufficient knowledge to either admit or deny whether the Department received full access to all books and records that would support or challenge Petitioner's Illinois State tax returns. The term "audit staff and management" is vague; the Department therefore denies all remaining allegations in Paragraph 25.

26. The Department's audit of Innophos included the taxable periods ending December 2009 and December 2010 (the "Years at Issue").

**ANSWER:** The Department admits the allegations in Paragraph 26.

27. The Department's auditor (the "Auditor") determined a total deficiency for the tax period ending December 2009 of \$1,406,079.49 (the "2009 Deficiency").

**ANSWER:** The Department admits the allegations in Paragraph 27.

28. The 2009 Deficiency resulted from (i) the Auditor's adjustment of Innophos' sales factor by adding to the numerator, as "Illinois sales", those sales shipments that originated in Illinois and were delivered to states in which the auditor determined Innophos was not subject to tax; and (ii) the Auditor's adjustment of Innophos' "Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported."

**ANSWER:** The Department admits that, as detailed in the Statement accompanying the Notice of Deficiency dated September 11, 2014 (see Exhibit 1), the total 2009 Deficiency arose

because: (1) pursuant to 86 Ill. Admin. Code 100.3370(c)(1)(F), the Auditor adjusted Petitioner's sales apportioned to Illinois by including sales originating in Illinois and delivered to states in which Petitioner was not taxable; (2) pursuant to 86 Ill. Admin. Code 100.3370(a)(1), the Auditor adjusted Petitioner's Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported; (3) pursuant to 35 ILCS 735/3-3(b-20)(2), a late-payment penalty was assessed, and; (4) interest, as computed through September 11, 2014, was imposed upon the tax. The Department denies all other allegations in Paragraph 28 and demands strict proof thereof.

29. The Auditor proposed an additional late-payment penalty because Innophos "did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the 'Date of Issuance' shown on the form."

**ANSWER:** The Department admits that, pursuant to 35 ILCS 735/3-3(b-20)(2), and as detailed in the Statement accompanying the Notice of Deficiency dated September 11, 2014, the Department imposed an additional late-payment penalty because Petitioner did not pay the amount shown due on Form IL-870, Waiver of Restrictions, within 30 days after the Date of Issuance shown on the Form. The Department denies all other allegations in Paragraph 29 and demands strict proof thereof.

30. Once an Illinois audit has commenced, an additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in an increase of the penalty to 20%. 35 ILCS 735/3-3(b-20)(2).

**ANSWER:** Paragraph 30 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 735/3-1 *et seq.*, and states that such law speaks for itself.

31. The Auditor determined a total deficiency for the tax period ending December 2010 of \$1,126,050.59 (the “2010 Deficiency”).

**ANSWER:** The Department admits the allegation in Paragraph 31.

32. The 2010 Deficiency resulted from (i) the Auditor’s adjustment of Innophos’ sales factor by adding to the numerator, as “Illinois sales”, those sales shipments that originated in Illinois and were delivered to states in which the auditor determined Innophos was not subject to tax; and (ii) the Auditor’s adjustment of Innophos’ “Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported.”

**ANSWER:** The Department admits that, as detailed in the Statement accompanying the Notice of Deficiency dated September 11, 2014 (see Exhibit 2), the total 2009 Deficiency arose because: (1) pursuant to 86 Ill. Admin. Code 100.3370(c)(1)(F), the Auditor adjusted Petitioner’s sales apportioned to Illinois by including sales originating in Illinois and delivered to states in which Petitioner was not taxable; (2) pursuant to 86 Ill. Admin. Code 100.3370(a)(1), the Auditor adjusted Petitioner’s Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported; (3) pursuant to 35 ILCS 735/3-3(a-10), a late-filing or nonfiling penalty was assessed; (4) pursuant to 35 ILCS 735/3-3(b-20)(2), a

late-payment penalty was assessed, and; (5) interest, as computed through September 11, 2014, was imposed upon the tax. The Department denies all other allegations in Paragraph 32 and demands strict proof thereof.

33. The Auditor imposed a late-filing or nonfiling penalty because Innophos did not file a processable return by the due date. This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on Innophos' return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of Innophos' return, including any extended due date. The penalty cannot exceed \$250. 35 ILCS 735/3-3(a-10).

**ANSWER:** The Department admits that, pursuant to 35 ILCS 735/3-3(a-10), a late-filing or nonfiling penalty was assessed for the tax year ending December 2009. Department asserts that, Paragraph 33 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 735/3-1 *et seq.*, and states that such law speaks for itself. The Department denies all other allegations in Paragraph 33 and demands strict proof thereof.

34. The Auditor imposed the additional late-payment penalty because Innophos "did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the 'Date of Issuance' shown on the form."

**ANSWER:** The Department admits that, pursuant to 35 ILCS 735/3-3(b-20)(2), the Department assessed a late-payment penalty for the tax year ending December 2010. The Department denies all other allegations in Paragraph 34 and demands strict proof thereof.

35. On September 11, 2014, the Department issued to Innophos two Notices of Deficiency for the tax periods ending December 2009 and December 2010 assessing total deficiencies in the amounts of \$1,406,079.49 and \$1,126,050.59, respectively. Copies of the 2009 and 2010 Notices of Deficiency are attached hereto as **Exhibit 1** and **Exhibit 2**, respectively.

**ANSWER:** A copy of the Statutory Notice is required to be attached to the Taxpayer's petition pursuant to Rule 310(a)(1)(D) and is not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

### **COUNT I**

On November 17, 2015, the Department was granted Summary Judgment on Count I of the Petition. However, because paragraphs 36 through 43 are referenced in Counts III, V, VI, VII and VIII of the Petition, the Department has repeated those allegations and its answers thereto.

36. Innophos incorporates by this reference and realleges paragraphs 1 through 35 as though fully-set forth herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 35, as if fully set forth herein.

37. The Department's Auditor used the so-called "throwback rule" found in IITA Section 304(a)(3)(B) to increase the portion of Innophos' total business income apportioned to and taxed by Illinois.

**ANSWER:** The Department admits that the Department's auditor applied the throwback rule to compute Petitioner's sales "in Illinois," which was used to compute Petitioner's Illinois apportionment factor. The Department denies all other factual allegations in Paragraph 37 and demands strict proof thereof.

38. IITA Section 304(a)(3)(B) provides that a taxpayer's sales of tangible personal property made to states in which the taxpayer is not subject to tax are to be treated instead as sales in Illinois (*i.e.*, added to the numerator of the Illinois apportionment sales factor).

**ANSWER:** Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304(a)(3)(B) and states that such law speaks for itself.

39. On August 16, 2013, Public Act 98-0478 amended, effective January 1, 2014, the Illinois Income Tax Act with retroactive application to tax years ending on or after December 31, 2008, concerning the apportionment of business income.

**ANSWER:** Department admits that Public Act 98-0478 amended the Illinois Income Tax Act and that Public Act 98-0478 was effective January 1, 2014. Paragraph 39 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Moreover, the phrase "concerning the apportionment of business income", is vague and overly broad. Therefore, the Department denies all remaining factual allegations in Paragraph 39.

40. As amended by Public Act 98-0478, Section 304 (f) of the IITA provides that for taxable years ending on or after December 31, 2008, if the apportionment provisions of the IITA do not “fairly represent the market for the person’s goods, services or other sources of business income,” a person may petition for, or the Director may, without a petition, permit or require (i) separate accounting; (ii) exclusion of any one or more factors; (iii) the inclusion of one or more additional factors; or (iv) the employment of any other method to effectuate an equitable allocation and apportionment of the person’s business income. 35 ILCS 5/304(f), as amended.

**ANSWER:** Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304(f) and states that such law speaks for itself.

41. To throwback and add a sale to the Illinois numerator of the sales factor pursuant to IITA Section 304(a)(3)(B) a taxpayer must first determine that the sale was not made to the Illinois market, *i.e.* that the item sold had a final delivery destination in a market other than Illinois.

**ANSWER:** Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304(a)(3)(B) and states that such law speaks for itself.

42. The application of Section 304(a)(3)(B) to a tax year ending on or after December 31, 2008, which results in a sale to another state being added to the Illinois numerator, is directly at odds with IITA Section 304(f) as amended by P.A. 98-0478, because the knowing addition

of a non-Illinois sale to the Illinois numerator of the sales factor knowingly does not “fairly represent the [Illinois] market for the person’s goods, services or other sources of business income.”

**ANSWER:** Paragraph 42 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304 and states that such law speaks for itself. To the extent an answer is required, the Department denies the factual allegations in Paragraph 42 and demands strict proof thereof.

43. After January 1, 2014, the effective date of P.A. 98-0478, IITA Section 304(a)(3)(B) of the IITA can only be reconciled with IITA Section 304(f) when: (A) it is applied to a tax year ending before December 31, 2008, or (B) the Department, using its authority under IITA Section 304(f) and thus bearing the burden of proof thereunder, determines the application of the throwback rule to a tax year ending on or after December 31, 2008, is necessary to “fairly represent the market for the person’s goods, services or other sources of business income.”

**ANSWER:** Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of 35 ILCS 5/304 and states that such law speaks for itself. To the extent an answer is required, the Department denies the factual allegations in Paragraph 43 and demands strict proof thereof.

## COUNT II

On November 17, 2015, the Department was granted Summary Judgment on Count II of the Petition. Therefore, Department shall not repeat the allegations of Count II or its answers thereto.

## COUNT III

49. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

50. U.S. Public Law 86-272 provides in pertinent part:

No State, or political subdivision thereof, shall have power to impose, . . . a net income tax on the income derived within such State by any person from intrastate commerce if the only business activities within such State by or on behalf of such a person during the taxable year are either, or both, of the following . . .

1. The solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside of the State; . . . and

2. The solicitation of orders by such a person, or his representative, in such State in the name of or for the benefit of a prospective customer of such a person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in

15 U.S. Code § 381.

**ANSWER:** Paragraph 50 does not allege a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 15 U.S.C. § 381 referred to in Paragraph 50 and states that such law speaks for itself.

51. In summary, Congress intended for P.L. 86-272 to provide clear guidance to multistate business enterprises, and to thereby relieve them of undue state income tax compliance and economic burdens, by providing immunity from state income taxation to businesses that limited their activities in a state to those specified in the federal law.

**ANSWER:** Paragraph 51 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect at all relevant times of 15 U.S.C. § 381 referred to in Paragraph 51 and alleges that such law speaks for itself. Further, the Department denies the factual allegations in Paragraph 55 and demands strict proof thereof.

52. Article VI, Cl. 2 of the United States Constitution provides, in pertinent part, that:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; . . .

**ANSWER:** The Department admits the existence, force, and effect at all relevant times of the United States Constitution.

53. The Department's decision to increase the Illinois tax by the inclusion in the Illinois sales factor numerator of the Innophos sales to states in which P.L. 86-272 relieves Innophos of an income tax burden, frustrates the design and intent of Congress by increasing the burdens on interstate commerce in direct relation to the protection conferred by Congress.

**ANSWER:** Paragraph 53 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 53 and demands strict proof thereof.

**WHEREFORE,** the Department prays that the Tribunal enter an order:

- a. denying each prayer for relief in the Petitioner's Petition;
- b. holding that the Department's application of Illinois Income Tax Act Section 304(a) to Petitioner does not violate the Supremacy Clause of the United States Constitution;
- c. finding that the Notices of Deficiency are correct as issued;
- d. ordering judgment in favor of Department and against Petitioner; and
- e. granting such further relief as this Tribunal deems appropriate under the circumstances.

#### **COUNT IV**

On November 17, 2015, the Department was granted Summary Judgment on Count IV of the Petition. Therefore, the Department shall not repeat the allegations of Petition Count IV, or the Department's answers thereto.

#### **COUNT V**

60. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

61. For both the tax period ending December 2009 and December 2010, the Department imposed a late-payment penalty pursuant to Section 3-3(b-20)(2) of the UPIA.

**ANSWER:** The Department admits that it imposed a late payment penalty upon Petitioner pursuant to 35 ILCS 735/3-3(b-20)(2) for the Years at Issue.

62. Section 3-8 of the UPIA provides that penalties, other than a fraud penalty, “shall not apply if the taxpayer shows that his failure to . . . pay tax at the required time was due to reasonable cause.” 35 ILCS 735/3-8.

**ANSWER:** Paragraph 62 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 735/3-8 and states that such law speaks for itself.

63. Innophos made a good faith effort to determine the correct reporting of its sales and use tax liability through the exercise of ordinary business care and prudence.

**ANSWER:** Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 63 and demands strict proof thereof.

64. Innophos acted with reasonable cause and therefore, under section 3-8 of the UPIA, no penalties should apply to the audit deficiencies that the Department assessed against Innophos.

**ANSWER:** Paragraph 64 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 64 and demands strict proof thereof.

**WHEREFORE,** the Department prays that the Tribunal enter an order:

- a. denying each prayer for relief in the Petitioner's Petition;
- b. holding that Petitioner did not act with reasonable cause when it failed to include income from transactions pursuant to IITA 304(a)(3)(B)(ii) on its original returns for the Years at Issue;
- c. finding the Notices of Deficiency are correct as issued;
- d. ordering judgment in favor of Department and against Petitioner on Count V; and
- e. granting such further relief as this Tribunal deems appropriate under the circumstances.

#### **COUNT VI**

65. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

66. For the tax period ending December 2010, the Department imposed a late-filing or nonfiling penalty pursuant to Section 3-3(a-10) of the UPIA. 35 ILCS 735/3-3(a-10).

**ANSWER:** The Department admits that it imposed a late-filing or nonfiling penalty upon Petitioner pursuant to 35 ILCS 735/3-3(a-10) for the tax year ending December 31, 2010.

67. Section 3-8 of the UPIA provides that penalties, other than a fraud penalty, “shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. . .” 35 ILCS 735/3-8.

**ANSWER:** Paragraph 67 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 735/3-8 and states that such law speaks for itself.

68. Innophos made a good faith effort to file its processable return by the due date through the exercise of ordinary business care and prudence.

**ANSWER:** Paragraph 68 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the factual allegations in Paragraph 68 and demands strict proof thereof.

69. Innophos acted with reasonable cause and therefore, under section 3-8 of the UPIA, no penalties should apply to the audit deficiencies that the Department assessed against Innophos.

**ANSWER:** Paragraph 69 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 69 and demands strict proof thereof.

**WHEREFORE**, the Department prays that the Tribunal enter an order:

- a. denying each prayer for relief in the Petitioner's Petition;
- b. finding that Petitioner filed its original return (Form IL-1120) for the tax year ending December 31, 2010, after the extended due date;
- c. holding that Petitioner did not act with reasonable cause when it failed to timely file its original return for the tax year ending December 31, 2010;
- d. finding the Notices of Deficiency are correct as issued;
- e. ordering judgment in favor of Department and against Petitioner on Count VI; and
- f. granting such further relief as this Tribunal deems appropriate under the circumstances.

#### **COUNT VII**

70. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

71. The Tax Tribunal's order of November 17, 2015 establishes the law of the case that sales shipments of tangible personal property that originated in Illinois and were delivered to a purchaser in another state are "in this State" for purposes of computing the Illinois numerator of the sales factor if the taxpayer is not subject to a tax on or measured by income in the state of the purchaser, notwithstanding the retroactive effect of the amendment to Section 304(f) by P.A. 98-0478 (the "Law of this Case").

**ANSWER:** Paragraph 71 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the Tax Tribunal's order dated November 17, 2015, and states that such order speaks for itself.

72. Article IX, Section 2 (the "Uniformity Clause") of the Illinois Constitution of 1970 states:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

**ANSWER:** Paragraph 72 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the Illinois Constitution, Article IX, Section 2, and states that such law speaks for itself.

73. To survive a uniformity challenge, "a non-property tax classification must (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003) (internal citations omitted).

**ANSWER:** Paragraph 73 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect of the case law cited in Paragraph 73. The case law speaks for itself.

74. The uniformity clause "was intended to be a broader limitation on legislative power to classify for non-property tax purposes than the limitation of the equal protection clause" and

“[w]hen faced with a good-faith uniformity challenge, the taxing body bears the initial burden of producing a justification for the classification.” *Id.*

**ANSWER:** Paragraph 74 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

75. Thus, “a party bringing a uniformity clause challenge need not negate every conceivable basis that might justify the classification.” *Searle Pharmaceuticals, Inc. v. Department of Revenue*, 117 Ill. 2d 454, 468 (1987). Therefore, “a good-faith challenge to a tax classification requires the taxing body to justify the classification.” *Primeco Personal Communications L.P. v. Illinois Commerce Commission*, 196 Ill. 2d 70, 85 (2001).

**ANSWER:** Paragraph 75 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

76. Under the Law of this Case, taxpayers who sell tangible personal property and are required to apportion their income to Illinois under IITA § 304(a) are, unlike taxpayers required to apportion income under IITA § 304(b), (c), & (d), singled out to have their Illinois apportionment numerator increased based solely on whether they are subject to tax in the state where they delivered their products.

**ANSWER:** Paragraph 76 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304) and states that such law speaks for itself.

77. Taxpayers that sell insurance, financial services or transportation services do not have additional income subject to Illinois' income tax based solely on whether such activities or services were subject to tax in the states in which the taxpayers' customers received such services. See IITA § 304(b), (c) and (d), respectively.

**ANSWER:** Paragraph 77 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 5/304 and states that such law speaks for itself.

78. There is no real and substantial difference between taxpayers that sell tangible personal property and taxpayers that sell insurance, transportation services, or financial services.

**ANSWER:** Paragraph 78 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 78.

79. There is no real and substantial difference between a taxpayer that sells tangible personal property and taxpayers that sell insurance, transportation services or financial services, that would justify the differential treatment being proposed by the Law of this Case. The State's policy of "full apportionment" (that a taxpayer be taxed on no more and no less than 100% of its income) discriminates against a taxpayer that sells tangible personal property as compared to those taxpayers that sell insurance, transportation services, or financial services because of the failure to throw back sales of taxpayers in the insurance, transportation

services, or financial services industry can result in less than 100% of those taxpayers' incomes being subject to taxation.

**ANSWER:** Paragraph 79 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 79.

80. The Law of this Case is that IITA § 304(f) alternative apportionment, whether petitioned by a taxpayer or required by a Director, requires clear and cogent evidence of "gross distortion," therefore insurance, transportation services, and financial organization taxpayers who are not subject to tax in another state or states will not be required by the Director to use alternative apportionment to assure no more and no less than 100% of such taxpayer's income is subject to state taxation, while taxpayers that sell tangible personal property are required by IITA § 304(a)(3)(B)(ii) to throwback to Illinois their sales to such other non-tax state.

**ANSWER:** Paragraph 80 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 80. The Department admits the existence, force, and effect at all relevant times of Section 304 of the Illinois Income Tax Act and states that such law speaks for itself.

81. Therefore, the Department has the burden of producing a justification for the differential treatment afforded tangible personal property sellers in comparison to sellers of insurance, transportation services, and financial services.

**ANSWER:** Paragraph 81 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 81.

**WHEREFORE,** the Department prays that the Tribunal enter an order:

- a. denying each prayer for relief in the Petitioner's Petition;
- b. holding that the Department's application of Illinois Income Tax Act Section 304(a) to Petitioner does not violate the Uniformity Clause of the Illinois Constitution of 1970;
- c. finding that the Notices of Deficiency are correct as issued;
- d. ordering judgment in favor of Department and against Petitioner; and
- e. granting such further relief as this Tribunal deems appropriate under the circumstances.

### **COUNT VIII**

82. Innophos incorporates by this reference and realleges paragraphs 1 through 43 as though fully-set forth herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 43, as if fully set forth herein.

83. At all times relevant hereto, the IITA provided that "Sales of tangible personal property are in this state if: (i) the property is delivered or shipped to a purchaser other than the United States government, within this State regardless of the f.o.b. point or other conditions of sale." 35 ILCS 5/304(a)(3)(B)(i).

**ANSWER:** Paragraph 83 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 5/304 and states that such law speaks for itself.

84: At all times relevant hereto, the IITA provided, in pertinent part, that “Sales of tangible personal property are in this state if: (ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this State and . . . the person is not taxable in the state of the purchaser.” 35 ILCS 5/304(a)(3)(B)(ii).

**ANSWER:** Paragraph 84 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 5/304 and states that such law speaks for itself.

85. As amended by Public Act 98-0478, Section 304(f) of the IITA provides that for taxable years ending on or after December 31, 2008, if the apportionment provisions of the IITA do not “fairly represent the market for the person’s goods, services or other sources of business income,” a person may petition for, or the Director may, without a petition, permit or require (i) separate accounting; (ii) exclusion of any one or more factors; (iii) the inclusion of one or more additional factors; or (iv) the employment of any other method to effectuate an equitable allocation and apportionment of the person’s business income. 35 ILCS 5/304(f), as amended.

**ANSWER:** Paragraph 85 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/304(f) and states that such law speaks for itself.

86. P. A. 98-0478 did not affect the application of IITA Section 304(a)(3)(B)(i).

**ANSWER:** Paragraph 86 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/304(a)(3)(B)(i) and states that such law speaks for itself.

87. Due Process requires that P.A. 98-0478 limit the application of IITA Section 304(a)(3)(B)(ii) to tax years ending before December 31, 2008.

**ANSWER:** Paragraph 87 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

88. The Tax Tribunal's order of November 17, 2015 establishes the Law of this Case that sales shipments of tangible personal property that originated in Illinois and were delivered to a purchaser in another state are "in this State" if the seller was not taxable in the state of the purchaser, within the meaning of IITA Section 304(a)(3)(B)(ii), notwithstanding the retroactive effect of the amendment to Section 304(f) by P.A. 98-0478.

**ANSWER:** Paragraph 88 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is

required, the Department admits the existence, force, and effect of the Tax Tribunal's order dated November 17, 2015, and states that such order speaks for itself.

89. For tax years ending before December 31, 2008, Section 304(f) of the IITA did not provide for a taxpayer or for the Director of Revenue to deviate from the statutory apportionment formula within Section 304 unless the statutory formula applicable to a given taxpayer did not "fairly represent the extent of a person's business activity in this State."

**ANSWER:** Paragraph 89 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/304(f) and states that such law speaks for itself.

90. An Illinois taxpayer's fulfillment of a sales order to an out-of-state purchaser by the shipment of tangible personal property from a location in Illinois to the purchaser's destination outside of Illinois is business activity within Illinois which, for tax years ending before December 31, 2008: (a) was not considered to render the sale of the shipped item to be "in this State" if the Illinois taxpayer was not subject to a tax on or measured by net income in the purchaser's state; and (b) was not considered to be a sale "in this State" if the Illinois taxpayer was subject to a tax on or measured by net income in the purchaser's state and actually filed a return and paid the tax due on such return; but (c) it was considered a sale "in this State" if the Illinois taxpayer was subject to a tax on or measured by net income but did not file a return in that state.

**ANSWER:** Paragraph 85 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

91. For tax years ending on or after December 31, 2008, Section 304(f) of the IITA did not provide for a taxpayer or for the Director of Revenue to deviate from the statutory apportionment formula within Section 304 unless the statutory formula does not “fairly represent the market for the person’s goods, services or other sources of business income.” 35 ILCS 5/304(f), as amended by P.A. 98-0478 (emphasis added).

**ANSWER:** Paragraph 91 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/304(f) and states that such law speaks for itself.

92. An Illinois taxpayer’s fulfillment of a sales order to an out-of-state purchaser by the shipment of tangible personal property from a location in Illinois to the purchaser’s destination outside of Illinois, becomes part of the market for the person’s goods and services in the state of the purchaser rather than the market for the person’s goods and services in this State.

**ANSWER:** Paragraph 92 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 92.

93. The Illinois Constitution of 1970 provides as follows: “No person shall be deprived of life, liberty or property without due process of law . . . .” Ill. Const. art. I, § 2.

**ANSWER:** Paragraph 93 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the Illinois Constitution, Article I, Section 2, and states that such law speaks for itself.

94. The United States Constitution provides as follows: “No state . . . shall any state deprive any person of life, liberty, or property, without due process of law . . . .” U.S. Const. amend. XIV, § 1.

**ANSWER:** Paragraph 94 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of the United States Constitution, and states that such law speaks for itself.

95. The Law of this Case, under which IITA Section 304(a)(3)(B)(ii) includes as a sale “in this State,” a sale that is delivered to a purchaser outside this State, violates the Due Process clauses of the Illinois and the United States constitutions, respectively, for tax years ending on or after December 31, 2008.

**ANSWER:** Paragraph 95 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 95. The Department admits the

existence, force, and effect at all relevant times of P.A. 98-0478 and states that such law speaks for itself.

96. Under the Law of this Case, for tax years ending on or after December 31, 2008, a sale shipped from Illinois to a purchaser in either Germany or Iowa is an Illinois “market” sale if the taxpayer is subject to tax in Germany or Iowa but does not file a tax return in that jurisdiction.

**ANSWER:** Paragraph 96 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of P.A. 98-0478 and states that such law speaks for itself.

97. For tax years ending before December 31, 2008, both the sale to Germany and to Iowa represented Illinois business activity, the fair representation of which was policed under Section 304(f), but for tax years ending on or after December 31, 2008, Section 304(f) polices the fair representation of the market and neither the sale to Germany nor the sale to Iowa represent the Illinois market.

**ANSWER:** Paragraph 97 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department admits the existence, force, and effect of 35 ILCS 5/304(f) and states that such law speaks for itself.

98. Due Process protects against capricious legislation, which is either arbitrary or unreasonable as a matter of substance rather than procedure.

**ANSWER:** Paragraph 98 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

99. To arbitrarily declare that sales from Illinois to, say Germany or Iowa, are Illinois “market” sales based solely on (i) whether the sale is one of tangible personal property rather than of services or of intangibles, and (ii) on whether the sale is reported in a tax return in the jurisdiction of delivery of the item, is both capricious and unreasonable and contrary to the Due Process protections in the State and Federal constitutions.

**ANSWER:** Paragraph 99 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

100. There is no rational basis to support the discriminatory categorization of only sales of tangible personal property as being made “in this State” when they are known to be made outside Illinois based on whether the selling taxpayer has filed an income tax return in the purchaser’s state, and when sales of services or intangibles similarly made to purchasers in jurisdictions where the selling taxpayer does not file an income tax return are not deemed to be made “in this State.”

**ANSWER:** Paragraph 100 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 100.

**WHEREFORE**, the Department prays that the Tribunal enter an order:

- a. denying each prayer for relief in the Petitioner's Petition;
- b. holding that application of Section 304(a) of the Illinois Income Tax Act does not violate Petitioner's due process rights;
- c. finding that the Notices of Deficiency are correct as issued;
- d. ordering judgment in favor of Department and against Petitioner; and
- e. granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

**LISA MADIGAN**  
Attorney General  
State of Illinois

By: /s/ Jonathan M. Pope  
Jonathan M. Pope  
One of the Department's Attorneys

Rickey A. Walton  
(312) 814-1016  
rick.walton@illinois.gov

Jennifer Kieffer  
(312) 814-1533  
jennifer.kieffer@illinois.gov

Jonathan M. Pope  
(312) 814-3185  
jonathan.pope@illinois.gov

Special Assistant Attorneys General  
Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

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